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Next 1 Page(s) In Document Exempt

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OLC 81-0426

24 February 1981

REGISTRY

FILE: Legal

MEMORANDUM FOR: See Distribution

FROM:

Chief, Legislation Division, OLC

SUBJECT: H.R. 1049, Amending the Privacy Act
of 1974, 5 U.S.C. 552a

1. Subject Bill, recently introduced by Representative Barry M. Goldwater, Jr. (R., CA) is being sent to you for your information, review, and comment.

2. This Bill makes amendments to the entire Privacy Act by way of rearranging the order of sections, deleting or modifying current subsections, and adding new subsections. Intelligence equities are involved as the bill deletes the general exemption for the Central Intelligence Agency, currently found in Section 552a(j)(1). In working through this Bill, please pay particular attention to the following:

(a) subsection (b)(3) containing the proposed exemptions which would replace the current General and Specific exemptions under sections (j) and (k) respectively;

(b) section "(f) Propagation of Corrections" which greatly expands upon the current subsection (c)(4);

(c) new section "(j) Agency Implementation" which requires one official to oversee an office responsible for implementing the Act; and

(d) subsection (k)(4)(A) which, in case of intentional or willful violations, allows "special and general damages" (currently "actual damages") in an amount not less than \$1,000 "or more than the sum of \$10,000 in excess of the dollar amount of any special damages";

3. In addition, the Bill adds new definitions and amends current ones, requires reconsideration of any decision based upon erroneous information, holds noncomplying contractors or grantees liable for the award of any damages, attorney fees, and litigation costs in certain cases, and requires any request which could be processed under either FOIA or the Privacy Act to be processed under the latter.

4. OMB has requested the Agency's view on this Bill. We have already informed OMB that we have significant problems with it; Your comments are requested as soon as possible so that we can formulate a formal response. Please address your comments to [redacted] Assistant Legislative Counsel.

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Attachment

Distribution:

1 - [redacted] (OGC)
1 - [redacted] O/IG)
1 - [redacted] PCS/DDO)
1 - [redacted] (DDA)
1 - Tom White (DIS/DDA)
1 - OLC Subject (File: Privacy Act Amendments)
1 - OLC Chrono
OLC:KD:es (24 February 1981)

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97TH CONGRESS
1ST SESSION

H. R. 1049

To amend the Privacy Act of 1974.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1981

Mr. GOLDWATER introduced the following bill; which was referred to the
Committee on Government Operations

A BILL

To amend the Privacy Act of 1974.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. Section 552a of title 5, United States Code,
4 is amended to read as follows:

5 **“§ 552a. Information maintained on individuals**

6 **“(a) DEFINITIONS.—**For purposes of this section—

7 **“(1)** the term ‘agency’ means agency as defined in
8 section 552(e) of this title;

1 “(2) the term ‘individual’ means a citizen of the
2 United States or an alien lawfully admitted for perma-
3 nent residence;

4 “(3) the term ‘record’ means any item, collection,
5 or grouping of information about an individual includ-
6 ing, but not limited to:

7 “(A) normal directory information, such as
8 the individual’s name, address, telephone number,
9 business address, or similar information,

10 “(B) other numbers, symbols, fingerprints,
11 voiceprints, photographs, or identifying particulars
12 assigned to, or associated with, the individual,

13 “(C) information relating to the individual’s
14 background, education, finances, health, criminal
15 history, or employment history, or

16 “(D) any other attributes, affiliations, or
17 characteristics associated with, or assigned to, the
18 individual;

19 “(4) the term ‘individually identifiable record’
20 means a record which could be reasonably expected to
21 directly or indirectly identify the individual or individ-
22 uals to whom it pertains;

23 “(5) the term ‘statistical record’ means a record
24 which is collected or maintained by a Federal agency
25 or pursuant to a Federal research contract or grant, or

1 a subcontract thereof, for a research or statistical re-
2 porting purpose only and which is not used, in whole
3 or in part, in individually identifiable form, to make
4 any decision or to take any action directly affecting the
5 individual to whom the record pertains (except within
6 the context of the research plan or protocol or as pro-
7 vided by section 8 of title 13);

8 “(6) the term ‘accessible record’ means an individ-
9 ually identifiable record, except a statistical record,
10 which is:

11 “(A) systematically filed, stored, or otherwise
12 maintained according to some established retrieval
13 scheme or indexing structure and which is, in
14 practice, accessed by use of, or reference to, such
15 retrieval scheme or indexing structure for the
16 principal purpose of retrieving the record, or any
17 portion thereof, on the basis of the identity of, or
18 so as to identify, an individual, or

19 “(B) otherwise readily accessible because:

20 “(i) the agency is able to access the
21 record without an unreasonable expenditure
22 of time, money, effort, or other resources, or

23 “(ii) the individual to whom the record
24 pertains is able to provide sufficiently specific
25 locating information so as to render the

1 record accessible by the agency without an
2 unreasonable expenditure of time, money,
3 effort, or other resources;

4 “(7) the term ‘system,’ or ‘subsystem,’ means any
5 collection or grouping of accessible records as defined
6 by paragraph (6)(A) of this subsection;

7 “(8) the term ‘maintain’ includes collect, obtain,
8 maintain, possess, process, use, disseminate, or dis-
9 close;

10 “(9) the term ‘routine use’ means the use or dis-
11 closure of an individually identifiable record for a pur-
12 pose which is:

13 “(A) compatible with the purpose for which
14 the information in the record was collected or ob-
15 tained, and

16 “(B) consistent with the conditions or rea-
17 sonable expectations of use and disclosure under
18 which the information in the record was provided,
19 collected, or obtained; and

20 “(10) the term ‘collateral use’ means the use or
21 disclosure of an individually identifiable record for a
22 purpose which:

23 “(A) would not be considered a routine use
24 as defined by paragraph (9) of this subsection, and

1 “(B) is specifically authorized by statute:

2 *Provided, That such statute:*

3 “(i) was enacted after January 1, 1975,

4 and

5 “(ii) establishes specific criteria for the
6 use or disclosure of specific types of
7 information.

8 “(b) ACCESS TO RECORDS.—Each agency that main-
9 tains accessible records shall make those records available to
10 the individuals to whom they pertain as follows:

11 “(1) Except as provided under paragraphs (3) and
12 (5) of this subsection, each agency that maintains an
13 accessible record shall, upon receipt of a request which
14 reasonably describes such accessible record from the
15 individual to whom it pertains:

16 “(A) After receipt of satisfactory assurance
17 that the requesting individual is who he purports
18 to be—

“(i) make such accessible record, or a copy of all or any portion thereof, available to that individual in a form which is comprehensible to him and which reflects, as accurately as can be reasonably expected, the context or manner in which the agency maintains and uses that record;

1 “(ii) to the extent that the agency can
2 be reasonably expected to be aware of sub-
3 stantially similar or derivative versions of
4 such accessible record which it maintains,
5 and to the extent that such substantially sim-
6 ilar or derivative versions are themselves ac-
7 cessible records, make such substantially
8 similar or derivative versions of such accessi-
9 ble record, or a copy of all or any portion
10 thereof, available to that individual in a form
11 which is comprehensible to him and which
12 reflects, as accurately as can be reasonably
13 expected, the context or manner in which
14 the agency maintains and uses that record.

15 “(B) Upon request by an individual who has
16 been granted access under subparagraph (A), the
17 agency shall provide the individual with an ac-
18 counting of the actual uses and disclosures made
19 of such record within a reasonable period of time
20 prior to the request as follows:

21 “(i) The agency shall provide the indi-
22 vidual with an accounting of all of the prior
23 recipients of such record to whom the agency
24 could be reasonably expected to propagate a

1 correction pursuant to paragraphs (1)
2 through (4) of subsection (f).

3 “(ii) The agency shall provide the indi-
4 vidual with an accounting of any other prior
5 recipients of such record of which the agency
6 could be reasonably expected to be aware
7 but to whom the agency could not be reason-
8 ably expected to propagate corrections pur-
9 suant to such paragraphs.

10 “(iii) In providing the accounting pursu-
11 ant to divisions (i) and (ii) of this subpara-
12 graph, the agency shall take reasonable af-
13 firmative steps to inform the individual, in a
14 form comprehensible to him, of:

15 “(I) the date, nature, and purpose
16 of each disclosure, and

17 “(II) the name and address of the
18 person or agency to whom the disclo-
19 sure was made.

20 “(2) When an agency grants an individual access
21 to an accessible record or an accounting of the uses
22 and disclosures of such record pursuant to paragraph
23 (1) of this section, the individual to whom the record
24 pertains may, upon his request, be accompanied by a
25 person of his own choosing, except, that the agency

1 may require the individual to furnish a written state-
2 ment authorizing discussion or disclosure of that indi-
3 vidual's record, or its uses and disclosures, in the ac-
4 companying person's presence.

5 “(3) Nothing in this section shall be construed as
6 requiring an agency to grant an individual access to in-
7 formation within a record which is:

8 “(A)(i) specifically authorized under criteria
9 established by an Executive order to be kept
10 secret in the interest of national defense or foreign
11 policy, and

12 “(ii) is, in fact, properly classified pursuant
13 to such Executive order;

14 “(B) investigatory information compiled for
15 law enforcement purposes, but only to the extent
16 that the production of such information would:

17 “(i) interfere with enforcement proceed-
18 ings;

19 “(ii) deprive a person of a right to a fair
20 trial or an impartial adjudication;

21 “(iii) constitute an unwarranted invasion
22 of personal privacy;

23 “(iv) disclose the identity of a confiden-
24 tial source and, in the case of a record com-
25 piled by a criminal law enforcement authori-

8 “(vi) endanger the life or physical safety
9 of law enforcement personnel;

15 “(D) information compiled in reasonable an-
16 ticipation of civil action or proceeding;

17 “(E) investigatory material compiled solely
18 for the purpose of determining suitability, eligibil-
19 ity, or qualifications for Federal civilian employ-
20 ment, military service, Federal contracts, dis-
21 cretionary Federal grants, or access to classified
22 information, but only to the extent that the disclo-
23 sure of such material would reveal the identity of
24 a source who furnished information to the
25 Government under an express promise that the

1 identity of the source would be held in confidence,
2 or, prior to September 27, 1975, under an implied
3 promise that the identity of the source would be
4 held in confidence;

5 "(F) testing or examination material used
6 solely to determine individual qualifications for ap-
7 pointment or promotion in the Federal service the
8 disclosure of which would compromise the objec-
9 tivity or fairness of the testing or examination
10 process;

11 "(G) evaluation material used to determine
12 potential for promotion in the armed services, but
13 only to the extent that the disclosure of such ma-
14 terial would reveal the identity of a source who
15 furnished information to the Government under an
16 express promise that the identity of the source
17 would be held in confidence, or, prior to Septem-
18 ber 27, 1975, under an implied promise that the
19 identity of the source would be held in confidence;
20 or

21 "(H) authorized by statute to be withheld
22 from the parent or legal guardian of the individual
23 to whom the information pertains and the request-
24 ing individual is, in fact, the parent or legal

1 guardian of the individual to whom the informa-
2 tion pertains.

3 “(4) Any reasonably segregable portion of an ac-
4 cessible record shall be provided to any individual re-
5 questing such record pursuant to paragraph (1)(A),
6 (1)(B), or (1)(C) of this subsection, and any reasonably
7 segregable portion of the accounting of the uses and
8 disclosures of such record shall be provided to any indi-
9 vidual requesting such accounting pursuant to para-
10 graph (1)(D) of this section, after deletion of the por-
11 tions which are exempt under this subsection.

12 “(5) While it may not deny access to an acces-
13 sible record to the individual to whom the record
14 pertains, except as provided in paragraph (3) of this
15 subsection, an agency may establish special procedures
16 for the disclosure of information pursuant to paragraph
17 (1) of this subsection if the agency believes that the
18 disclosure of such information would adversely affect
19 the health of the individual to whom it pertains or the
20 safety of any other individual.

21 (c) AMENDMENT OF RECORDS.—Each agency that
22 maintains accessible records shall permit the individuals to
23 whom the records pertain to request amendment of those rec-
24 ords as follows:

1 “(1) When an individual has been granted access
2 to an accessible record, or a substantially similar or de-
3 rivative version thereof, pursuant to subsection (b)(1) of
4 this section, the agency shall also permit that individ-
5 uals to request amendment of that record, or the sub-
6 stantially similar or derivative versions thereof, and—

7 “(A) not later than 10 days (excluding Satur-
8 days, Sundays, and legal public holidays) after the
9 date of receipt of such request, acknowledge in
10 writing such request; and

11 “(B) promptly, either—

12 “(i) make any correction of any portion
13 thereof which the individual believes is not
14 accurate, relevant, timely, or complete; or

15 “(ii) inform the individual of its refusal
16 to amend the record, or the substantially
17 similar or derivative versions thereof, in ac-
18 cordance with his request, the reason for the
19 refusal, the procedures established by the
20 agency for the individual to request a review
21 of that refusal by the head of the agency or
22 an officer designated by the head of the
23 agency, and the name and business address
24 of that official.

1 “(2) The agency shall permit the individual who
2 disagrees with its refusal to amend his record, or the
3 substantially similar or derivative versions thereof, to
4 request a review of such refusal, and not later than 30
5 days (excluding Saturdays, Sundays, and legal public
6 holidays) from the date on which the individual re-
7 quests such review, complete such review and make a
8 final determination unless, for good cause shown, the
9 head of the agency extends such 30-day period.

10 “(3) If, after the review made pursuant to para-
11 graph (2) of this subsection, the reviewing official also
12 refuses to amend the record, or the substantially simi-
13 lar or derivative versions thereof, in accordance with
14 the individual's request, the agency shall—

15 “(A) permit the individual to file with the
16 agency a concise statement setting forth the rea-
17 sons for his disagreement with the refusal of the
18 agency, and

19 “(B) notify the individual of the provisions
20 for judicial review of the reviewing official's deter-
21 mination under subsection (k) of this section.

22 “(4) In any disclosure which contains information
23 about which the individual has filed a statement of dis-
24 agreement pursuant to paragraph (3) of this subsection

1 and which occurs after the filing of such statement, the
2 agency shall—

3 “(A) clearly identify any portion of the
4 record which is disputed, and

5 “(B) provide copies of the statement and, if
6 the agency deems it appropriate, copies of a con-
7 cise statement of the reasons of the agency for
8 not making the amendments requested, to persons
9 or other agencies to whom the disputed informa-
10 tion has been disclosed.

11 “(d) LIMITATIONS ON DISCLOSURE.—No agency shall
12 disclose any individually identifiable record by any means of
13 communication to any person, or to another agency, unless
14 such disclosure would be—

15 “(1) pursuant to a written request by, or with the
16 prior written consent of, the individual to whom the
17 record pertains;

18 “(2) required under section 552 of this title;

19 “(3) to those officers and employees of the agency
20 who have a need for the record in the performance of
21 their duties: *Provided*, That such disclosure is—

22 “(A) necessary and proper for the perform-
23 ance of the agency’s own mission and functions,
24 and

1 “(B) a routine use as defined by subsection
2 (a)(9) of this section;

3 “(4) to a person other than an officer or employee
4 of the agency:

5 *Provided*, That such disclosure is—

6 “(A) a routine use as defined by subsection
7 (a)(9) of this section, and

8 “(B) certified by the designated official under
9 subsection (j) of this section as meeting the re-
10 quirements in subsection (a)(9) of this section;

11 “(5) a collateral use as defined by subsection
12 (a)(10) of this section: *Provided*, That such disclosure is
13 certified by the designated official under subsection (j)
14 of this section as meeting the requirements in subsec-
15 tion (a)(10) of this section;

16 “(6) to the Bureau of the Census for purposes of
17 planning or carrying out a census or survey or related
18 activity pursuant to the provisions of title 13;

19 “(7) to the National Archives of the United States
20 as information which has sufficient historical or other
21 value to warrant its continued preservation by the
22 United States Government, or for evaluation by the
23 Administrator of General Services or his designee to
24 determine whether the information has such value;

1 “(8) a disclosure of a statistical record in a form
2 which is not individually identifiable;

3 “(9) to another agency or to an instrumentality of
4 any governmental jurisdiction within or under the con-
5 trol of the United States for a civil or criminal law en-
6 forcement activity if the activity is authorized by law,
7 and if the head of the agency or instrumentality has
8 made a written request to the agency which maintains
9 the record specifying the particular portion desired and
10 the law enforcement activity for which the record is
11 sought;

12 “(10) to a person pursuant to a showing of com-
13 pelling circumstances affecting the health or safety of
14 any individual: *Provided*, That, upon such disclosure,
15 notification thereof is transmitted to the last known ad-
16 dress of the individual to whom the record pertains;

17 “(11) to either House of Congress, or, to the
18 extent of matter within its jurisdiction, any committee
19 or subcommittee thereof, any joint committee of Con-
20 gress or subcommittee of any such joint committee;

21 “(12) to a Member of Congress in response to an
22 inquiry from that Member which is made at the ex-
23 press request of—

1 “(A) the individual to whom the record per-
2 tains and that individual is a constituent of the
3 Member, or

4 “(B) a relative or legal representative of the
5 individual to whom the record pertains, and

6 “(i) the requesting relative or legal rep-
7 resentative of the individual to whom the
8 record pertains is a constituent of the
9 Member, and

10 “(ii) the individual to whom the record
11 pertains is incapacitated or otherwise clearly
12 unable to request the Member's assistance
13 himself;

14 “(13) to the Comptroller General, or any of his
15 authorized representatives, in the course of the per-
16 formance of the duties of the General Accounting
17 Office; or

18 “(14) pursuant to the order of a court of compe-
19 tent jurisdiction.

20 “(e) COLLECTION AND MAINTENANCE OF INFORMA-
21 TION.—

22 (1) Each agency that collects or maintains individ-
23 ually identifiable records shall—

24 “(A) collect information to the greatest
25 extent practicable directly from the individual to

1 whom the information pertains when such in-
2 formation may affect determinations about an
3 individual's rights, benefits, or privileges under
4 Federal programs;

5 “(B) take reasonable affirmative steps to
6 enable individuals from whom it requests informa-
7 tion about themselves or others to decide whether
8 to supply that information in as informed and un-
9 coerced a manner as is reasonably possible and, to
10 that end, the agency shall make available to the
11 individual, unless the individual has already been
12 notified within a reasonable period of time prior to
13 the request and has been offered a retention copy
14 of, the following information:

15 “(i) the authority which authorizes the
16 solicitation of the information,

17 “(ii) whether such disclosure is manda-
18 tory or voluntary and the consequences to
19 the individual of not providing the informa-
20 tion,

21 “(iii) the principal purpose or purposes
22 for which the information is intended to be
23 used,

24 “(iv) any routine or collateral uses of
25 the information which could be reasonably

1 expected to influence the individual's deci-
2 sion,

3 "(v) the scope, techniques, and sources
4 of any procedures for verification of the in-
5 formation, and

6 "(vi) the title, business address, and
7 business telephone number of a responsible
8 agency official who can assist the individual
9 in his decision or answer any questions
10 which the individual may have;

11 "(C) collect or maintain in its records only
12 such information about an individual as is relevant
13 and necessary to accomplish a purpose of the
14 agency required to be accomplished by statute or
15 by Executive order of the President;

16 "(D) maintain all records which are used by
17 the agency in making any determination about
18 any individual with such accuracy, timeliness,
19 completeness, and relevance as is reasonably nec-
20 essary to assure fairness in the determination, al-
21 though this provision shall not prohibit any
22 agency or component thereof which performs as
23 its principal function any activity relating to the
24 enforcement of criminal laws, from maintaining
25 unverified or otherwise potentially inaccurate, un-

1 timely, incomplete, or irrelevant information: *Pro-*
2 *vided*, That such information is clearly identified
3 as such to all users or recipients of that informa-
4 tion;

5 “(E) establish reasonable administrative,
6 technical, and physical safeguards to assure the
7 integrity, confidentiality, and security of such indi-
8 vidually identifiable records so as to minimize the
9 risk of substantial harm, embarrassment,
10 inconvenience, or unfairness to the individual to
11 whom the information pertains; and

12 “(F) take reasonable affirmative steps to
13 serve notice on an individual when any record on
14 such individual is made available to any person
15 under compulsory legal process when such proc-
16 ess becomes a matter of public record.

17 (2) No agency, or officer, employee, agent, or
18 contractor thereof, shall collect or maintain informa-
19 tion:

20 “(A) describing the content of any publica-
21 tion, speech, or other expression of belief or argu-
22 ment by an individual in the exercise of rights
23 guaranteed by the first amendment, unless such
24 information is compiled pursuant to an authorized
25 investigation of the sedition or espionage under

1 sections 792 through 797 and sections 2381
2 through 2386 of title 18, or unless such informa-
3 tion would be legally admissable evidence in a
4 criminal prosecution and is compiled pursuant to
5 an authorized investigation of a violation of the
6 criminal laws of the United States;

7 “(B) describing the forum in which an indi-
8 vidual publishes, speaks, or otherwise exercises
9 his first amendment rights of speech, association,
10 or religion, unless such information is compiled
11 pursuant to an authorized investigation of a viola-
12 tion of the laws of the United States; or

13 “(C) otherwise describing the way any indi-
14 vidual exercises his rights guaranteed by the first
15 amendment, except to the extent that such infor-
16 mation is limited to collecting and maintaining the
17 time, place, and observed associations of an indi-
18 vidual which are compiled pursuant to and in the
19 course of an authorized investigation of a violation
20 of the laws of the United States.

21 (3) The provisions of subparagraphs (A), (B), and
22 (C) of paragraph (2) shall not prohibit an agency from
23 collecting or maintaining—

24 “(A) a specific item of information which is
25 expressly required by statute, or which is express-

1 ly authorized by the individual to whom it per-
2 tains, to be collected or maintained, or

3 “(B) information the collection or mainte-
4 nance of which would be a reasonable and proper
5 library, bibliographic, abstracting, or similar refer-
6 ence function.

7 “(f) PROPAGATION OF CORRECTIONS.—

8 “(1) Each agency that maintains individually iden-
9 tifiable records shall attempt to assure the accuracy,
10 timeliness, and completeness of the records maintained
11 by the sources and the prior recipients of the informa-
12 tion in its records by taking reasonable affirmative
13 steps to notify such sources and prior recipients who
14 have, within a reasonable period of time, provided in-
15 formation to, or received information from, an individ-
16 ually identifiable record maintained by the agency of
17 all—

18 “(A) corrections of that individually identifi-
19 able record made pursuant to subsection
20 (c)(1)(B)(i) of this section;

21 “(B) statements of disagreement regarding
22 information contained in that individually identifi-
23 able record made pursuant to subsection (c)(3) of
24 this section, together with, if such exists, the cor-
25 responding statement of the agency’s position

1 made pursuant to subsection (c)(4)(B) of this sec-
2 tion; and

3 “(C) corrections of erroneous information
4 contained in that individually identifiable record
5 which are normal updates, changes, or modifica-
6 tions of that information made in the performance
7 of the agency’s functions, provided that—

8 “(i) such corrections are made pursuant
9 to subsection (e)(1)(D) of this section,

10 “(ii) such corrections could be reason-
11 ably expected to affect the outcome of any
12 determination on the individual if known to
13 either the sources or prior recipients of the
14 erroneous information, and

15 “(iii) the sources and prior recipients of
16 the erroneous information could not be rea-
17 sonably expected by the agency to otherwise
18 become aware of such corrections through
19 normal means.

20 “(2) The agency shall not be required to notify,
21 pursuant to subparagraph (A), (B), or (C) of paragraph
22 (1) of this subsection—

23 “(A) a prior recipient who received the erro-
24 neous information pursuant to section 552 of this
25 title, or

1 “(B) a source of the erroneous information
2 who provided the information as an individual
3 acting on his own behalf and not in an official ca-
4 pacity as a representative, officer, employee, or
5 agent of an agency or other organization.

6 “(3) Notwithstanding the provisions of paragraph
7 (2) of this subsection, the agency shall also take rea-
8 sonable affirmative steps to notify any person specifi-
9 cally named by the individual to whom they pertain of
10 corrections or statements of disagreement or agency
11 position as enumerated in subparagraph (A), (B), or (C)
12 of paragraph (1) of this subsection.

13 “(g) FAIRNESS IN DETERMINATIONS.—In addition to
14 the provisions of subsection (e)(1)(D) of this section, agencies
15 shall take reasonable affirmative steps to reconsider any de-
16 terminations which were made on the basis of erroneous in-
17 formation after receipt of—

18 “(1) a correction made by an individual pursuant
19 to subsection (c)(1)(B)(i), or

20 “(2) a correction or a statement of disagreement
21 or agency position which has been propagated pursuant
22 to subsection (f) of this section.

23 “(h) GENERAL NOTICE OF AGENCY SYSTEMS, POLI-
24 CIES, AND PRACTICES.—

1 “(1) Each agency that maintains individually iden-
2 tifiable records shall publish in the Federal Register at
3 least annually a notice which describes in detail, in
4 terms of systems and subsystems that most accurately
5 reflects the context or manner in which the agency
6 uses the information, the existence and character of
7 such systems and subsystems, which notice shall in-
8 clude—

9 “(A) the name and location of each system
10 or subsystem, as well as any substantially similar
11 or derivative systems or subsystems;

12 “(B) the authority for the maintenance of the
13 system or subsystem;

14 “(C) the categories of individual on whom
15 records are maintained in the system or subsys-
16 tem;

17 “(D) the categories of information or data
18 items maintained in the system or subsystem;

19 “(E) each use or disclosure of the records
20 contained in the system or subsystem, including
21 the categories of users and the purposes of such
22 use or disclosure;

23 “(F) the policies and practices of the agency
24 regarding storage, retrievability, access controls,

1 retention, and disposal of the information main-
2 tained in the system or subsystem;

3 “(G) the title, business address, and business
4 telephone of the agency official responsible for the
5 system or subsystem;

6 “(H) the agency procedures whereby an indi-
7 vidual can request:

8 “(i) access to records pertaining to him
9 in the system or subsystem, and

10 “(ii) amendment of such records; and

11 “(I) the categories of sources of information
12 in the system, except to the extent that material
13 so published would be information to which an in-
14 dividual would be denied access under subsections
15 (b)(3)(A) and (b)(3)(B).

16 “(2) The Office of the Federal Register shall an-
17 nually compile and publish the notices published pursu-
18 ant to paragraph (1) of this subsection and the rules
19 published pursuant to subsection (j) of this section in a
20 form available to the public at low cost and which is
21 indexed, arranged, or otherwise prepared to enable
22 ease of use and reference by the public.

23 “(i) RIGHTS OF PARENTS AND LEGAL GUARDIANS.—
24 For the purposes of this section, the parent of any minor, or
25 the legal guardian of any individual who has been declared to

1 be incompetent due to physical or mental incapacity or age
2 by a court of competent jurisdiction, may act on behalf of the
3 individual.

4 “(j) AGENCY IMPLEMENTATION.—

5 “(1) The head of the agency shall designate one
6 official with the authority to oversee the agency’s im-
7 plementation of this section, and such designated offi-
8 cial shall—

9 “(A) be the head of an office designated or
10 created by the agency head, with as many compo-
11 nents, field offices, or other supporting structures
12 and staff as the agency head deems necessary;

13 “(B) issue such instructions, guidelines, and
14 standards, and make such determinations, as are
15 necessary for the implementation of this section;

16 “(C) take reasonable affirmative steps to
17 assure that all agency employees and officials re-
18 sponsible for the collection, maintenance, use, and
19 dissemination of individually identifiable records
20 are aware of the requirements of this section; and

21 “(i) the instructions, guidelines, stand-
22 ards, and determinations, issued pursuant to
23 subparagraph (B) of this paragraph,

24 “(ii) the rules promulgated pursuant to
25 paragraph (2) of this subsection, and

1 “(iii) the penalties for noncompliance.

2 “(2) In order to carry out the provisions of this
3 section, each agency that collects and maintains indi-
4 vidually identifiable records shall promulgate rules, in
5 accordance with the requirements (including general
6 notice) of section 553 of this title, which shall—

7 “(A) define reasonable times, places, and re-
8 quirements, for identifying an individual who re-
9 quests access to records pertaining to him before
10 the agency shall make those records available to
11 the individual;

12 “(B) establish procedures for the disclosure
13 to an individual upon his request for records per-
14 taining to him, including special procedures, if
15 deemed necessary, for the disclosure of informa-
16 tion which would adversely affect the health of
17 the individual to whom the records pertain or the
18 safety of any other individual;

19 “(C) establish procedures for reviewing a re-
20 quest from an individual concerning the amend-
21 ment of any records pertaining to that individual,
22 for making a determination on the request, for an
23 appeal within the agency of an initial adverse
24 agency determination, and for whatever additional
25 means may be necessary for each individual to be

1 able to exercise fully his rights under this section;
2 and

3 “(D) establish fees to be charged, if any, to
4 any individual for making copies of records per-
5 taining to him, excluding the cost of any search
6 for and review of the records.

7 “(k) CIVIL REMEDIES.—

8 “(1) Whenever any agency:.

9 “(A) makes a determination under subsection
10 (c) of this section not to amend an individual’s
11 record in accordance with his request, or fails to
12 make such review in conformity with that subsec-
13 tion;

14 “(B) refuses to comply with an individual re-
15 quest under subsection (b)(1) of this section;

16 “(C) fails to maintain any record concerning
17 any individual with such accuracy, relevance,
18 timeliness, and completeness as is necessary to
19 assure fairness in any determination relating to
20 the qualifications, character, rights, or opportuni-
21 ties of, or benefits to, the individual that may be
22 made on the basis of such record, and consequent-
23 ly a determination is made which is adverse to
24 the individual; or

1 “(D) fails to comply with any other provision
2 of this section, or any rule promulgated
3 thereunder,
4 the individual may bring a civil action against the
5 agency, and the district courts of the United States
6 shall have jurisdiction in the matters under the provi-
7 sions of this subsection.

8 “(2)(A) In any suit brought under the provisions
9 of paragraph (1)(A) of this subsection, the court may
10 order the agency to amend the individual’s record in
11 accordance with his request or such other way as the
12 court may direct. In such a case, the court shall deter-
13 mine the matter de novo.

14 “(B) The court may assess against the United
15 States reasonable attorney fees and other litigation
16 costs reasonably incurred in any case under this para-
17 graph in which the complainant has substantially
18 prevailed.

19 “(3)(A) In any suit brought under the provisions
20 of paragraph (1)(B) of this subsection, the court may
21 enjoin the agency from withholding the records, or the
22 accounting of the uses and disclosures thereof, and
23 order the production to the complainant of any agency
24 records, or the accounting of the uses and disclosures
25 thereof, improperly withheld from him. In such a case,

1 the court shall determine the matter de novo. The
2 court may examine the contents of any agency records,
3 or any accounting of the uses and disclosures thereof,
4 in camera to determine whether the records or any
5 portion thereof, or any accounting of the uses and dis-
6 closures thereof, may be withheld under any of the ex-
7 emptions set forth in subsection (b)(3) of this section,
8 and the burden is on the agency to sustain its action.

9 “(B) The court may assess against the United
10 States reasonable attorney fees and other litigation
11 costs reasonably incurred in any case under this para-
12 graph in which the complainant has substantially
13 prevailed.

14 “(4) In any suit brought under the provisions of
15 paragraph (1)(C) or (1)(D) of this subsection in which
16 the court determines that the agency acted in a
17 manner which was intentional or willful, the court may
18 order the agency to act in a manner consistent with
19 this section, and, in addition, the United States shall
20 be liable to the individual in an amount equal to the
21 sum of:

22 “(A) special and general damages sustained
23 by the individual as a result of the failure under
24 paragraph (1)(C) or (1)(D) of this subsection, but
25 in no case shall a person entitled to recovery re-

1 ceive less than the sum of \$1,000 or more than
2 the sum of \$10,000 in excess of the dollar amount
3 of any special damages; and

4 “(B) the costs of the action together with
5 reasonable attorney fees as determined by the
6 court.

7 “(5) An action to enforce any liability created
8 under this section may be brought in the district court
9 of the United States in the district in which the com-
10 plainant resides, or has his principal place of business,
11 or in which the agency records are situated, or in the
12 District of Columbia, without regard to the amount in
13 controversy, within 2 years from the date on which the
14 cause of action arises, except that where an agency
15 has materially and willfully misrepresented any infor-
16 mation required under this section to be disclosed to an
17 individual and the information so misrepresented is ma-
18 terial to the establishment of the liability of the agency
19 to the individual under this section, the action may be
20 brought at any time within 2 years after discovery by
21 the individual of the misrepresentation. Nothing in this
22 section shall be construed to authorize any civil action
23 by reason of any injury sustained as the result of a dis-
24 closure of a record prior to the effective date of this
25 section.

1 “(l) CRIMINAL PENALTIES.—

2 “(1) Any officer or employee of an agency, who
3 by virtue of his employment or official position, has
4 possession of, or access to, agency records which con-
5 tain individually identifiable information the disclosure
6 of which is prohibited under this section or by rules or
7 regulations established thereunder, and who knowing
8 that disclosure of the specific material is so prohibited,
9 willfully discloses the material in any manner to any
10 person or agency not entitled to receive it, shall be
11 guilty of a misdemeanor and fined not more than
12 \$5,000.

13 “(2) Any officer or employee of any agency who
14 willfully maintains any collection or grouping of rec-
15 ords without meeting the notice requirements of sub-
16 section (h)(1) of this section shall be guilty of a misde-
17 meanor and fined not more than \$5,000.

18 “(3) Any person who knowingly and willfully re-
19 quests or obtains any record concerning an individual
20 from an agency under false pretenses shall be guilty of
21 a misdemeanor and fined not more than \$5,000.

22 “(m) GOVERNMENT CONTRACTORS AND GRANTEES.—

23 “(1) Any contractor or recipient of a Federal
24 grant, or any subcontractor thereof, who performs any
25 function on behalf of a Federal agency which requires

1 the contractor or grantee to maintain individually iden-
2 tifiable records shall be subject to the provisions of this
3 section, except that this provision shall not apply to:

4 “(A) the employment, personnel, or other ad-
5 ministrative records which the contractor or
6 grantee maintains as a necessary aspect of sup-
7 porting the performance of the contract or grant
8 but which bear no other relation to the perform-
9 ance of the contract or grant,

10 “(B) individually identifiable records:

11 “(i) which are neither required nor im-
12 plied by the terms of the contract or grant,

13 “(ii) for which no representation of Fed-
14 eral sponsorship or association is made, and

15 “(iii) which will not be submitted or
16 otherwise provided to the Federal agency
17 with which the contract or grant is estab-
18 lished.

19 “(2) The agency with which the contract or grant
20 is established shall, consistent with its authority, be re-
21 sponsible for insuring that the contractor or grantee
22 complies faithfully with the provisions of this section.

23 “(3) For any contracts or grants agreed to on or
24 after the effective date of this section to which subsec-
25 tion (m)(1) of this section applies:

1 “(A) any such contractor or grantee, or any
2 employee of such contractor or grantee, shall, for
3 purposes of the criminal penalties of subsection (l)
4 of this section, be considered to be an employee of
5 the agency;

6 “(B) any such contractor or grantee shall, for
7 purposes of the civil remedies of subsection (k) of
8 this section, be considered to be an agency,
9 except that the damages, attorney fees, and litiga-
10 tion costs under subsections (k)(2)(B), (k)(3)(C),
11 and (k)(4) shall be assessed against the contractor
12 or grantee instead of against the United States;
13 and

14 “(C) no official or employee of any agency of
15 the United States shall include, or authorize to be
16 included, in any such contract or discretionary
17 grant any provision indemnifying the contractor or
18 grantee from the civil remedies of subsection (k)
19 of this section.

20 “(n) ARCHIVAL RECORDS.—

21 “(1) Each agency record which is accepted by the
22 Administrator of General Services for storage, process-
23 ing, and servicing in accordance with section 3103 of
24 title 44 shall, for the purposes of this section, be con-
25 sidered to be maintained by the agency which depos-

1 ited the record and shall be subject to the provisions of
2 this section. The Administrator of General Services
3 shall not disclose the record except to the agency
4 which maintains the record, or under rules established
5 by that agency which are not inconsistent with the
6 provisions of this section.

7 “(2) Each agency record pertaining to an identifi-
8 able individual which was transferred to the National
9 Archives of the United States as a record which has
10 sufficient historical or other value to warrant its con-
11 tinued preservation by the United States Government,
12 prior to the effective date of this section, shall, for the
13 purposes of this section, be considered to be maintained
14 by the National Archives and shall not be subject to
15 the provisions of this section, except that a statement
16 generally describing such records (modeled after the re-
17 quirements relating to records subject to subsections
18 (h)(1)(A) through (h)(1)(G) of this section) shall be pub-
19 lished in the Federal Register.

20 “(3) Each agency record pertaining to an identifi-
21 able individual which is transferred to the National Ar-
22 chives of the United States as a record which has suffi-
23 cient historical or other value to warrant its continued
24 preservation by the United States Government, on or
25 after the effective date of this section, shall, for the

1 purposes of this section, be considered to be maintained
2 by the National Archives and shall be exempt from the
3 requirements of this section except subsections (h)(1)(A)
4 through (h)(1)(G) of this section.

5 (o) REPORT ON NEW SYSTEMS.—Each agency shall
6 provide adequate advance notice to Congress and the Office
7 of Management and Budget of any proposal to establish or
8 alter any system of records in order to permit an evaluation
9 of the probable or potential effect of such proposal on the
10 privacy and other personnel or property rights of individuals
11 or the disclosure of information relating to such individuals,
12 and its effect on the preservation of the constitutional princi-
13 ples of federation and separation of powers.

14 (p) ANNUAL REPORT.—The President shall submit to
15 the Speaker of the House and the President of the Senate, by
16 June 30 of each calendar year, a consolidated report, sepa-
17 rately listing for each Federal agency the number of records
18 contained in any system of records which were exempted
19 from the application of this section under the provisions of
20 subsection (b)(3) of this section during the preceding calendar
21 year, and the reasons for the exemptions, and such other
22 information as indicates efforts to administer fully this
23 section.

24 “(q) EFFECT OF OTHER LAWS.—

1 “(1) Whenever an agency receives a request for
2 access to records which could be processed either
3 under the provisions of section 552 of this title or
4 under the provisions of this section, the agency shall
5 process such request under the provisions of this sec-
6 tion, except that in no instance shall the requesting in-
7 dividual receive less information than he would receive
8 if the request were processed under section 552 of this
9 title.

10 “(2) No agency shall rely upon any exemption
11 contained in section 552 of this title to withhold from
12 an individual any record which is otherwise accessible
13 to the individual under the provisions of this section.

14 “(r) MAILING LISTS.—An individual’s name and ad-
15 dress may not be sold or rented by an agency unless such
16 action is specifically authorized by law. This provision shall
17 not be construed to require the withholding of names and
18 addresses otherwise permitted to be made public.”.

19 SEC. 2. Section 552(a)(3) of title 5, United States Code,
20 is amended by striking out “Except” and inserting in lieu
21 thereof “Except as provided under section 552a(q) of this
22 title, and except”.

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